

ENVIRONMENTAL QUALITY COUNCIL

December 7 & 8, 1995, Montana State Capitol

Original Minutes with Attachments

COUNCIL MEMBERS PRESENT

Mr. Jerry Noble, Chair
Rep. Vicki Cocchiarella,
Vice-chair
Sen. Vivian Brooke
Sen. William Crismore
Sen. Steve Doherty
Sen. Lorents Grosfield
Rep. Dick Knox
Mr. Glenn Marx

Sen. Ken Mesaros
Rep. Scott Orr
Rep. Bill Ryan
Mr. Jerry Sorensen
Ms. Jeanne-Marie Souvigney
Rep. Bill Tash
Sen. Jeff Weldon

COUNCIL MEMBERS EXCUSED

Rep. Debbie Shea
Mr. Greg Tollefson

STAFF MEMBERS PRESENT

Mr. Todd Everts
Mr. Michael Kakuk
Ms. Sallie Melcher
Mr. Larry Mitchell
Ms. Kathleen Williams

VISITORS' LIST

ATTACHMENT 1

COUNCIL ACTION

Approved the minutes of the September 14 & 15 meeting with a change requested by SEN. BROOKE.

Voted to pay for MR. EVERTS to attend the educational forum, "Responding to Social, Economic and Environmental Change." They also voted to allocate \$500 to be divided among any EQC members who want to attend.

Voted to abandon the Environmental Risk Assessment and Prioritization process at this time and to proceed with updating the 1975 EQC publication, *Montana Environmental Indicators*.

CALL TO ORDER AND ROLL CALL

On December 7, the EQC attended an interactive video conference regarding environmental risk assessment and prioritization (ERAP) in order to get information to determine whether to pursue an ERAP in Montana. The meeting was held at the Helena College of Technology.

On December 8, the chair called the meeting to order at 8:30 A.M. at the State Capitol. He asked the secretary to take note of members in attendance. (ATTACHMENT 2)

ADMINISTRATIVE MATTERS

New Staff Introductions

MR. EVERTS introduced the new resource policy analyst, LARRY MITCHELL. With the hiring of MR. MITCHELL the Legislative Environmental Policy Office is fully staffed.

Legislative Reorganization Issues

BOB PERSON, Legislative Services Division (LSD) director, discussed the progress of the legislative reorganization (EXHIBIT 1) mandated by SB 398. He said that in September, the division heads, including MR. PERSON; SCOTT SEACAT of the Office of the Legislative Auditor; and CLAYTON SCHENCK of the Office of the Legislative Fiscal Analyst; appointed a reorganization task force. They received a report from the task force in October. Based upon that report and other staff input, the division directors produced a proposal addressing the specifics of

reorganization. The division directors have targeted June, 1996 as the projected goal to realize the reorganization proposal.

MR. PERSON reported that the contractor that was hired to construct a classification and pay plan for the division, the National Council of State Legislatures (NCSL), was moving forward and would be presenting a proposal to the division heads sometime before the end of December. The personnel subcommittee of the Legislative Council will then meet to discuss the proposed plan. NCSL will present a final report by the end of January.

MR. NOBLE asked about the progress of the personnel subcommittee of the Legislative Council and the issues related to MR. EVERT's confirmation as Legislative Environmental Analyst. MR. PERSON said the personnel subcommittee would be receiving a report from NCSL on the classification of all legislative employees.

MR. NOBLE asked MR. PERSON how many employees were working for the Legislative Council. MR. PERSON said there were 39 employees working for the Legislative Council and about 140 employees in the whole legislative branch, not counting session employees.

EQC Budget Update

MR. EVERTS reported that expenditures to date for the Council were less than last year at the same time. He said that this was because of the elimination of the Water Policy Committee which had been included in the EQC budget. By December of 1994, the Water Policy Committee (WPC) had met several times, so there were more travel expenditures overall than in 1995. MR. EVERTS

speculated that the Enforcement and Compliance Subcommittee meetings will probably end up using all the funds that the WPC would have used. However, he said, it looked like there would be room for flexibility in the travel budget.

SEN. MESAROS, a member of the former WPC, said the WPC had made a commitment during the previous interim to having meetings outside of the Helena area to enable more people to participate. He said it ended up costing more, but the public turnout was good in the various locations, so the out-of-Helena meetings had been worthwhile.

MR. NOBLE commended MR. EVERTS for his budget preparation. He announced that MR. EVERTS had drafted a list of prospective meeting dates (EXHIBIT 2) for the EQC and the Enforcement and Compliance Subcommittee for the next year. MR. NOBLE said it appeared there would be some flexibility in the budget so that if the need arose for a meeting out of town or some other meeting expense, it appeared there would be money for extra expenses.

EQC Financial Audit

MR. EVERTS reported that the recent financial audit of the EQC resulted in a favorable "no recommendations;" a "clean report." (EXHIBIT 3) He said he would be going before the Legislative Audit Committee at its next meeting to answer any questions they might have about the audit.

MR. NOBLE commended the LEPO staff, past and present, for the good work that led to a favorable audit.

Honzel Decision and Attorney's Fees

MR. EVERTS updated the EQC on the latest developments regarding the lawsuit brought against the Legislative Council and the EQC by the Montana Environmental Information Center (MEIC). The MEIC won the suit and was requesting attorney's fees to be paid by the defendants. (EXHIBIT 4) MR. EVERTS said that the Legislative Council staff attorney, GREG PETESCH, responded to the request by saying it was within the discretion of the judge not to grant attorney's fees and that the public has already received the benefits from this case, and therefore the petitioner should not receive attorney's fees. MR. EVERTS noted, however, that Judge Honzel had previously granted attorney's fees to the petitioner in a similar case.

MR. NOBLE reviewed the suit under discussion, explaining that it allowed public access to bills during the drafting process. He said there had been no decision yet by the committee about how to implement procedures to provide public access.

APPROVAL OF MINUTES

MR. NOBLE called for a motion to approve the minutes of the EQC meeting held September 15, 1995.

SEN. BROOKE noted there was a reference in the minutes to the Clark Fork River being closed-- "They want to address the issue for the senior water holders." SEN. BROOKE said she would hope the minutes could reflect with more clarity why the Clark Fork was closed, rather than indicating the only issue is the rights

of senior water rights holders.

MR. NOBLE said if there were no objections the minutes would be changed in the manner SEN. BROOKE requested. REP. TASH moved to approve the minutes. SEN. MESAROS seconded the motion. The motion passed unanimously. (The minutes were subsequently changed to include an exact transcription of MR. SIMONICH's statement.)

MONTANA ENVIRONMENTAL POLICY ACT SUBCOMMITTEE UPDATE

SEN. MESAROS, Chair of the MEPA subcommittee, reported the main item of discussion at the subcommittee meeting on December 7 was the implementation of SB 231. He said one of the biggest challenges to accomplishing this was coordinating the various agencies and divisions within agencies. He said the subcommittee had devised three recommendations: 1. that agencies adopt guidelines to implement SB 231 and that the adoption process would include oversight from the MEPA subcommittee and extensive public (regulated community, interest groups, etc.) involvement; 2. that the MEPA subcommittee continue its oversight of the MEPA implementation training process; and 3. that the MEPA subcommittee develop criteria for the George Darrow Award, and then select a recipient of the award.

REP. RYAN, Vice Chair of the MEPA subcommittee said, regarding recommendation 1, much of the discussion preceding that recommendation centered around whether to recommend rules or whether to recommend guidelines. They decided to recommend

guidelines which may be changed to rules in the future. They felt guidelines gave them more flexibility to work with.

ENFORCEMENT AND COMPLIANCE SUBCOMMITTEE UPDATE

REP. KNOX, Chair of the Enforcement and Compliance Subcommittee, gave a report on the subcommittee meeting that was held December 7. (EXHIBIT 5) He said the subcommittee had held two meetings. He said they were taking their mandate under HJR10 very seriously, that is, "to review the appropriateness of the compliance and enforcement programs of the state's natural resource and environmental agencies." The subcommittee is working to develop a process that will eliminate subjectivity, to as great a degree as possible, from the hearing and evaluation processes. They are also structuring a system of evaluation. They are making every effort to involve as many people as possible by sending out announcements of meetings, as well as producing periodic reports of the subcommittee's progress sent to interested parties after each meeting.

MR. NOBLE asked if there were any questions or comments from the Council or from the public regarding the MEPA or the Enforcement and Compliance subcommittees.

GAIL ABERCROMBIE, representing the Montana Petroleum Association, asked what the timeline would be for developing the MEPA guidelines. SEN. MESAROS said there was a proposed schedule of meetings, but that a timeline for developing the guidelines had not yet been established.

SEN. BROOKE said she understood the Department of Environmental Quality had submitted an interim proposal for guidelines. She wondered if those were in effect. MR. EVERTS said they were in effect because they had an effective date of October, 1995. He said those guidelines would be reviewed by the DEQ, the MEPA subcommittee and the public, to determine applicability. SEN. BROOKE told MS. ABERCROMBIE there was a handout presented at a previous EQC meeting by JOHN NORTH, DEQ staff attorney, which outlined the schedule for the guidelines.

MR. NOBLE commended the subcommittees and the staff for their good work so far.

SEN. MESAROS said, to clarify, that because of the October, 1995 effective date of SB 231, the agencies had had to develop some interim guidelines. The subcommittee had questions related to original intent about the guidelines. Subsequently there will be some refining of the guidelines.

SENATE BILL 382 STUDY UPDATE

MR. NOBLE said that he and LEPO staff member, MR. MITCHELL, had both been attending the SB 382 study meetings. MR. NOBLE briefly reviewed what had transpired at the December 6, 1995 meeting. He said the study group was in the process of getting background information on the Comprehensive Environmental Clean up and Responsibility Act (CECRA) from the agencies and establishing ground rules for the meetings. He said there was a review of the Resource Indemnity Trust (RIT), and how it works. There was a

review of the Abandoned Mine Program, as well as a review of the Petroleum Tank Compensation Fund, of the DEQ ground water clean up program and of a Missoula ground water program. MR. NOBLE, referring to the previous day's video teleconference regarding environmental risk assessment and prioritization, noted that one of the ERAP panelists, David Osterberg, representing an Iowa consulting firm, said that in Iowa there is in place a 2 cent a gallon gas tax whereas Montana's is 1/2 cent. The Montana fund builds to 8 million dollars and stops building and then starts accumulating again when it gets down to 4 million dollars. This year Montana has spent about 5 million dollars. The administrative cost includes the cost of the director and a non paid board; about 80 thousand dollars. In Iowa, those comparable figures are 20 million, with about 17 million being spent on clean up. MR. NOBLE said he thought this demonstrates that our underground tank program is doing an efficient job.

MR. MITCHELL added that the main thrust of the SB 382 study is to determine, if policy changes regarding the RIT and other funding sources, where the money will come from to pay for clean up.

He said the next SB 382 study meeting was scheduled for January 24, 1996.

MR. NOBLE invited MATT MCKINNEY, Director of the Montana Consensus Council, to tell the EQC about an upcoming educational series, (EXHIBIT 6) coordinated by the Consensus Council and Carroll College. The objective of the workshop series will be

to provide an opportunity for leaders and citizens to look at the broader context of environmental policy within the state and within the region. MR. MCKINNEY said the Council members were all invited.

MR. NOBLE said he felt that the EQC should pay MR. EVERTS fee to attend the series. He asked if Council members thought the EQC budget should also pay for EQC members to attend.

MR. EVERTS said that part of the "tab" for the teleconference of the previous day regarding environmental risk assessment and prioritization was picked up by a small training allowance in the Legislative Services Division budget.

MR. MCKINNEY said there was a small amount of money provided for grants to be awarded to people who want to attend the seminar. He said he hoped to get a diverse group of participants; and that he hoped the grant money would help do that.

SEN. WELDON suggested that if a number of members wanted to attend, perhaps the EQC could pay for a portion of each of their fees.

MR. NOBLE suggested the EQC allocate about \$500 for the workshop and then pay an equal portion from that for each member wanting to attend.

SEN. WELDON moved that the EQC pay for MR. EVERT's fee for the seminar. REP. KNOX seconded the motion. The motion passed unanimously.

MR. NOBLE asked the EQC members to peruse the seminar brochure and said they would discuss it later.

REP. TASH referred to MR. NOBLE's comments regarding the Iowa gas tax and Iowa's remediation program. He wondered if the Iowa system might be applicable in Montana toward replacement of funding for clean up of hazardous waste in Montana. He expressed interest in contacting representatives from the Iowa program to get more information about it. MR. NOBLE said as he understood the program, the underground tank storage program was something like Montana's bed tax, in that it involved specifically designated funds and the money collected was used for a single purpose.

SEN. BROOKE referred to the discussion of SB 382. She said she recalled that there were some questions regarding how the study participants were selected. She referred to a list of participants in a December 1 draft and she asked if that was the final list. MR. MCKINNEY explained how the group's participants were selected. He said that first, four separate caucuses were formed. These caucuses include potentially responsible parties, public interest groups, local government groups and a federal government group. Then, the caucuses selected the people who are the participants of the study group.

ENVIRONMENTAL RISK ASSESSMENT & PRIORITIZATION (EXHIBIT 7)

STEPHEN MALY, Legislative Services Division researcher, said that in order to facilitate a decision by the Council as to whether to pursue the ERAP, he would review what had transpired so far. At

the first meeting when the issue was discussed, the Council decided to pursue a "trial run" internal study. The project goal would be to develop a prioritized list of risks deserving the Council's attention. At the September 15, 1995 meeting, MR. MALY presented a five-stage proposal to implement an ERAP. The first stage involved gathering together a panel of persons with varying experience with ERAP. MR. MALY said it was now time for the next step-- to decide whether to go forward with the study.

REP. KNOX said he had struggled with the idea of an ERAP because, although he likes the concept, he's concerned about the "real-world" implementation of such a project. He said through the teleconference they learned of an ERAP in Oregon which was performed "from the top down." The Oregon representative indicated there were fewer than two percent of the citizens of Oregon who even knew of the project. REP. KNOX said he felt that this would be a program with the potential to dramatically affect the economic well being of the citizens of Montana. REP. KNOX said he had a real problem with doing something of this magnitude with such a low level of citizen knowledge and participation.

REP. COCCHIARELLA said it was her understanding when the EQC voted in favor of ERAP as part of their work plan, that the intent of pursuing an ERAP was to prioritize issues for the EQC. She said she was not picturing it as a statewide project involving a lot of immediate and direct impact on citizens.

MR. EVERTS noted that the Council had decided they want to develop an internal EQC process to prioritize issues. He said

the Council is statutorily required to perform trends analysis. He said it was the decision of the Council as to how they would fulfill that requirement. Also, MR. EVERTS said, they should consider the problem of issues coming before the Council that, although they truly are environmental concerns, take up a disproportionate amount of the Council's time, related to the number of people affected. An ERAP would help prioritize to assure the Council's limited meeting time is well spent.

SEN. MESAROS said he did not disagree that the Council should devise a system to prioritize issues, but it appeared to him that it would be a top heavy program. He said he could foresee this project taking up too much time and expense. He said he would encourage the Council to go no further with the ERAP.

REP. COCCHIARELLA said, in her experience of serving on the EQC two interims, it seemed the EQC goes through a process of prioritization at the beginning of each interim, but that there is no tool in place for them to use to prioritize. She noted that CAROL BONDY, of Montana Fish, Wildlife & Parks, had described that department's process of implementing programs while maintaining accountability. They use ERAP as a management tool. REP. COCCHIARELLA said she sees the ERAP process as simply a way to prioritize and have a way to be accountable to the Legislature, as well as to gauge whether the Council is reaching its goals.

MR. SORENSEN said he felt the EQC members were all interested in different aspects of an ERAP. He was particularly impressed with

an environmental indicators report published by the EQC in 1975. He said he thought it might be valuable to update the report for 1996, to get a feel for the general trends. He said after pursuing that project it could be determined whether to proceed. REP. KNOX said he understood REP. COCCHIARELLA's point regarding the internal scope of the proposed ERAP. He said, though, he was concerned that the project would be impossible to keep within the confines of serving as a tool for prioritization by the Council. Therefore, he said, he remains reluctant to go any further with such a project.

SEN. WELDON said he agreed with MR. SORENSEN that the 1975 environmental Indicators report appeared to be a very helpful document. He also said that he had been approached by University of Montana faculty members who asked why the EQC no longer published environmental indicators studies. The faculty members had also asked if they could provide student help to produce the report. SEN. WELDON said he felt this was a particularly good idea because it would be at no cost to the EQC. MS. SOUVIGNEY said she liked MR. SORENSEN's idea, as well, because this approach would focus on data. She said she was reluctant to ask for more information from the public because she thinks the public is tired of being asked for their views and then not seeing any results from expressing their views. She referred to the Montana Futures Project, a risk assessment project that sought public opinion.

SEN. BROOKE said she would support updating the indicators

report. She said she was concerned, however, that once the data were gathered, the whole EQC would not "buy into it" if the group is not in agreement that this is something they all want to do. She said she had heard from SEN. MESAROS that there would be some hesitancy on the part of some EQC members to accept whatever results came from an indicators study. Therefore, she said, before the study is assigned to staff, the Council should reach agreement that they will accept the results.

REP. RYAN said maybe the Council should discuss the project more to devise a plan everyone is committed to.

MR. MARX noted the State Water Plan has operated in the past few years as a sort of ERAP. He said at the beginning of each cycle of the plan, a process involving both the agencies and the public designates the most important issues and then those issues are brought to the Legislature. Most of those bills pass. MR. MARX said since that system works, he feels it would be good to have the same sort of system for all environmental issues.

REP. ORR said during the ERAP video teleconference it had been affirmed by participants that environmental risk assessment can very easily lead to bigger programs and bigger budgets. He thinks even if an ERAP starts small, it will definitely expand and consume more time and money than planned. Although he agrees there might be a better way to establish priorities than the way the EQC currently operates, he wondered if it's affordable. He also was concerned because he doesn't think it's a good idea to "homogenize" the goals of the Council. He thinks that that's an

unrealistic goal because it won't work politically. The EQC, in REP. ORR's opinion, is not designed to be of one opinion. He said he thought the video teleconference did not present both sides; it just included people who thought ERAP was a good idea, with one ambivalent participant. He said he thinks they should move away from ERAP and maybe go with updating the indicators project.

MR. SORENSEN moved to abandon the ERAP process at this time and to proceed with updating the 1975 *Montana Environmental Indicators*, with the objective of looking at environmental trends in accordance with the EQC's duties as described by the statute, provided there is enough staff time to do the project. SEN.

MESAROS seconded the motion. REP. COCCHIARELLA said she was going to vote against the motion. While she thinks the motion is a good idea, she thinks it should be just the first step of an ERAP process. She said she's concerned that the EQC never really knows if they are fulfilling their statutory duties, because they have no tool to gauge it.

REP. RYAN said he did not want to abandon the possibility of an ERAP process, either, and he would vote against the motion.

SEN. BROOKE said she was going to vote for the motion because she thought updating the indicators was a step forward in meeting the Council's responsibilities. She asked about staff time. She wondered if everyone would be in agreement to use graduate student help in the project.

SEN. CRISMORE asked MR. EVERTS if he thought his staff had enough

time to handle the project. MR. EVERTS said the staff was much smaller than when the first indicators project was performed in 1975. He said outside help would definitely be needed to accomplish the task. He said Montana State University had also offered help.

PEGGY TRENK, representing the Western Environmental Trade Association, said the idea of updating the indicators was a good one. She recommended using data that already exists, instead of gathering new data.

SEN. MESAROS noted the motion on the floor did not include a provision for using outside help to complete the project.

MR. NOBLE said that would not have to be part of the motion; that the staff could make that decision on their own. He asked for a roll call vote on the motion. Voting "yes" were SEN. BROOKE, SEN. CRISMORE, SEN. DOHERTY, SEN. GROSFIELD, REP. KNOX, SEN. MESAROS, MR. NOBLE, REP. ORR, MR. SORENSEN, MS. SOUVIGNEY, REP. TASH and SEN. WELDON. Voting "no" were REP. COCCHIARELLA and REP. RYAN.

MS. WILLIAMS asked that the motion be clarified. She asked if it was the intent of the Council to replicate the indicators in the 1975 report or if they wanted to add more indicators.

MR. SORENSEN said his desire was to replicate the indicators and to add some if there were any that should be added.

MR. EVERTS noted the Council had not indicated a deadline for the project. He suggested the staff get together and figure out a timeline and report back to Council.

WATER POLICY OVERSIGHT

MR. KAKUK said the next agenda item was in response to the Council's request that they be updated on instream flow issues, specifically the FW&P Water Leasing Program and HB 472 from the 1995 session, which allows individuals to temporarily change consumptive water rights to instream flow rights.

Fish, Wildlife & Park's Water Leasing Program

LITER SPENSE, Fisheries Division, Montana Dept. of Fish, Wildlife & Parks, gave a history of the water leasing program. (EXHIBIT 8) He said the program started as a result of a bill passed in the 1989 Legislature, HB 707--the Water Leasing Study. 1988 was a severe drought year. There were low stream flows and a lot of controversy about the lack of instream flows. In turn, the bill was controversial. The original bill said FW&P would be the only entity that could lease water rights to improve instream flows. The initial bill said the study would expire in 1993. It allowed for studying up to five streams as subjects for improvement from instream flows. FW&P talked to water users and they said they didn't like the idea of the program having an expiration date. The water users said, for purposes of long-term planning, they needed to have long-term leases. Most said that would mean a minimum of five years. In 1991 the legislation came up for amendment and the leasing period was extended to 10 years. It now expires in 1999. The five stream limit was increased to ten. The leases implemented during the period would extend past the expiration date of the bill. In 1993 there was an amendment to

increase the limit to 20 streams. The amendment also said that each study should have, as part, an annual report. The point of these stream studies, said MR. SPENSE, is to improve fish habitat. He said there are laws that help protect stream channels-- water quality laws and some laws that work to acquire instream flows for fisheries such as the 1969 Murphy rights on 12 specified streams and the water law passed in 1973--the water reservation process allows the department and other entities to acquire instream flows through an administrative process. When water rights are acquired, they acquire a priority date for those rights. Those instream priority dates don't affect the priority dates of the water users prior to that time. So there are still a lot of streams where; even though FW&P has instream water rights with, for example, a 1985 priority date; the streams can still get low because there are prior rights on that stream. Water leasing is an attempt to acquire some of the earlier rights to put some of that water from a diversionary use back into the stream to improve instream flow. MR. SPENSE provided some background information about the study. The study has concentrated on smaller streams, tributary streams with spawning runs. The first step in the study was to get approval from the Board of Natural Resources to pursue the study of each stream for leasing. That process went on for a number of years and the Board approved seven streams. Now there is no longer a Board and its functions went to the Department of Natural Resources and Conservation (DNRC), so now it's the DNRC's responsibility to

approve streams for study. The next step in the process is meetings with water rights holders in the area, if there are water rights holders who could be affected by a water rights lease. They then proceed to negotiate an agreement with the water user. These are all voluntary agreements. If they can't come to terms on a lease agreement, there will be no lease. There is also an administrative process in place that changes water rights to an instream use application. That process includes a public notice to water users, and if there is public concern, a public hearing. If the hearing is successful, the lease can be implemented. The program was slow getting started because of controversy surrounding the bill and its implementation. There were no leases approved for the first four years. There are now seven leases, summarized in EXHIBIT 8. REP. TASH asked if applications for leasing were approved on the basis of need. MR. SPENSE said most of the lessees did not want an interruption in the agreement i.e., on a dry year/wet year basis, so they still lease the water in the wet years too. It's impossible to anticipate the dry years or to wait and get the lease arranged at the last minute. REP. TASH said he is opposed to water leasing. As Representative of the headwaters of the Missouri, he said that area has historically been dependent on flood irrigation. At times the diverted water is 25 times what the crop consumptive needs are, but the left-over water is not wasted; it's stored. REP. TASH feels it's the only affordable storage left for Montana-- diverting as close to the source as

possible and then letting the water trickle back. It works like formal storage. It can be supplemented on a sustained basis. He said he would recommend that the program not encourage too much water to go toward instream flow. He said it might lead to the appearance that there is excess water that could be diverted out of state.

MR. SPENSE said that was why they are concentrating on small streams and have no plans to take on a major river system-- they can affect improvement in fisheries without impacting too many water users.

SEN. BROOKE said she thought it was a very good list of streams.

MR. MARX asked what kind of funding base the program had for 1996. MR. SPENSE said the program's funding comes from state fishing license fees and there are also funds designated by the River Restoration Act. MR. MARX asked if they had faced any financial constraints; if they have had to prioritize because they had too many applications for leases.

MR. SPENSE said they could foresee that might happen, although it had not yet. He said there is also some federal aid available.

MR. MARX said that in the future if they have to prioritize he would like to see prioritization of native fish habitat.

SEN. GROSFIELD said he recalled there had been a fund set up for donations to the account. He asked if the program got any private money to help pay for the leases.

MR. SPENSE said The Nature Conservancy set up a fund to receive donations and the fund got up to about \$7,000 but the money has

been spent. He said they had not looked into further private funding.

SEN. GROSFIELD asked if they would consider trying to generate private funding for the program. MR. SPENSE said that would be an option.

SEN. GROSFIELD asked if it was River Restoration Act money that was funding the leases. MR. SPENSE said there was a fund set up in the regular budget that was paying for the leases so far. He said if they continue to get leases they won't be able to pay for them all from the budget. The new River Restoration bill allows the money to be taken out of that. In some cases they had taken money from the old River Restoration fund and used that for projects to physically improve the stream i.e., different kinds of diversions.

SEN. GROSFIELD asked about the Cedar Creek lease as described in EXHIBIT 8. He asked what the document meant by "periodically" as in "periodically checking the flow?" MR. SPENSE said there was an individual who lived at Cedar Creek who has traditionally adjusted the head gates. That individual makes note of the flow measurements on a gauge installed by the United States Geological Survey.

SEN. GROSFIELD noted that the Mill Creek lease has been in place a few years. He asked if there were any data regarding whether the lease has been successful in its attempt to flush cutthroat down to the river. MR. SPENSE said they have been monitoring the young fish and, although they can't sample the entire stream

because it is too large, the sampling they have done indicates there has been a slight increase in the number of fish. Because it will be three years before the fish come back to the stream as adults, there hasn't been enough time for the fish to grow to adulthood. He said that on Blanchard Creek, a much smaller stream, there was a 300 percent increase in the number of fish in the first year of the water leasing program.

House Bill 472 Instream Flow Update

MR. LARRY HOLMAN, Water Resources Division of the DNRC, spoke about HB 472. HB 472 allows for temporary changes of water rights to provide for instream flow fishery enhancement. It allows private entities to work with owners of water rights to lease water to benefit fisheries. In the past, he said, the leases were through the Montana Dept. of Fish, Wildlife & Parks. To date, they had not had any applications for water leasing. He said before the private entities submit an application they have to publish their intent. So far, no one had done that. He said the bill also calls for a working group from the governor's office to prepare a report; that group will probably be the Consensus Council. A report will be prepared and submitted in 2001. This legislation is scheduled to terminate in 2005. The DNRC set up procedures for implementing HB 472, but they have not been tested since there have been no applications.

SEN. GROSFIELD asked if the DNRC had received inquiries about the program from any groups such as Trout Unlimited (TU). MR. HOLMAN

said he was not aware of any inquiries.

SEN. GROSFIELD asked MR. SPENSE if he had received any questions about the new leasing program and if he'd referred any groups to that program. MR. SPENSE said that he had talked to TU about a potential lease but TU hadn't decided how to proceed.

SEN. GROSFIELD said that the issue of opening up the leasing program to the private sector had been discussed in the last few years a lot. Some of the conservation groups, in particular, were very interested in offering leasing opportunities to the private sector. SEN. GROSFIELD said he would be interested in getting a report from TU or another conservation group that worked to pass the bill as to whether they think it's working and whether they intend to use it.

MR. MARX asked MR. HOLMAN if the DNRC had instituted any programs to inform the public about the water leasing program. MR. HOLMAN said that there had been no formal public information campaign.

MR. MARX said the Consensus Council served as the "catalyst" for the group that put the bill together and the group still meets on a regular basis. He said the group had produced an article about the program they were planning to distribute. MR. MARX said in addition to inviting a conservation group to report to the EQC, they should also invite the group that put the bill together.

REP. KNOX said he supported SEN. GROSFIELD's suggestion that the EQC get a report on the program. However, he said, in a program of this nature they would have to consider three years of the program. REP. KNOX said he was sure the agricultural groups were

aware of the bill. Regarding whether or not the groups who would like to lease are aware of the program, he said that if the issue has the validity and push that it's had in the past, he thinks it's inevitable that there will be some action. He suggested the Council wait until fall to get a report.

MS. HOLLY FRANZ, representing the Montana Power Company, said there is an instream flow pilot program that applies specifically to the upper Clark Fork. The program is spearheaded by the Clark Fork Basin Planning Committee, made up of agriculture, fisheries and others interested in the watershed. Under that plan, an individual water user can convert their water right to an instream flow without going through a third party.

NATURAL RESOURCE AGENCY REORGANIZATION UPDATE

MR. ALAN DAVIS, representing the DEQ, explained they were looking at the reorganization mandate as a chance to "create" a new environmental agency. (EXHIBIT 9) They worked with the Consensus Council and about 30 employees within the DEQ to devise a plan to do this. They also established a list of guiding principles, the core values of the agency and what they expect of employees--that they be service oriented, helpful to the public and to continually seek ways to improve "customer relations;" to make timely decisions; to act with integrity and honesty; and to be productive and fiscally responsible. MR. DAVIS showed a graphic representation of how the agency was different before reorganization. He said it was determined by the director and

the study group that agency functions were too compartmentalized. It was determined that a better situation would bring employees together for synthesized solutions to problems. The general areas that should overlap would be remediation, permitting and compliance, enforcement and planning, prevention, and assistance.

SEN. WELDON asked how morale was at the DEQ. MR. DAVIS said it was dependent on "where people were in the process." He speculated that many people are threatened by change, but other people are beginning to see the opportunities that the reorganization creates.

SEN. MESAROS asked where MEPA implementation fits in the reorganization. MR. DAVIS said he saw MEPA as having two parts-- a "forward looking part" and a "permitting part," a situation that creates a question of what functional area should envelop MEPA. They have yet to resolve that question.

MR. SORENSEN said he liked the idea of integration of functions, as represented by the circles in the graphic. Several members of the regulated community have expressed concern about segregation of enforcement people from permitting people. He suggested that it will take a good "sales job" to convince the mining industry it will change. MR. DAVIS said there wasn't a clear way to separate the functions, but it was thought that by having a separate enforcement unit, the permitting people would be able to work with the permittees to solve problems.

REP. COCCHIARELLA asked if the process will remain the same in

that the person doing the permitting will also do the inspection.

MR. DAVIS said that won't change because the person doing the inspection must be very knowledgeable about the job.

SEN. GROSFIELD asked how an inspector would know when to "throw up his hands" and refer the case to the enforcement division.

MR. DAVIS said there was no clear line. The DEQ developed an enforcement manual for the water quality division to create consistency in what cases are referred for enforcement action.

SEN. GROSFIELD said he appreciated the idea of working toward being more public service oriented with the idea of helping, instead of punishing, offenders.

SEN. BROOKE said there was a situation in Missoula regarding White Pine Sash Company, that was being monitored by the Montana Department of Agriculture in which the company and the state were working together on environmental clean-up issues. SEN. BROOKE said the local department of public health and the industry were frustrated because there was no agreement about what the industry actually was required to do toward clean-up. SEN. BROOKE believes there should be more clarity in instructing industry about what needs to be done. MR. DAVIS said it was the expectation of MR. SIMONICH that all parts of the DEQ are working toward solving problems as their goal.

SEN. CRISMORE asked MR. DAVIS about the status of the Pony mine situation. MR. DAVIS said representatives from State Superfund, the Abandoned Mine Bureau and the Water Quality Division of the

DEQ recently met regarding the abandoned mine in Pony to try to work toward a solution to a water pollution problem there.

MR. NOBLE said there had been a small amount of remediation work done in Pony. He said he had heard that some mining industry people had initiated some remediation.

SEN. CRISMORE said MR. NOBLE was probably referring to activities occurring as a result of SB 410, the bill that takes liability away from the mining industry if they work to solve a problem.

SEN. GROSFIELD said that must be what the mining representatives are doing in Pony. He noted that the DEQ should be overseeing that process, according to the bill.

MR. DAVIS said there was about 25,000 dollars available for the remediation at Pony. The Water Quality Division of the DEQ recommended using it to pump the waste pond dry. MR. DAVIS said that MR. SIMONICH had said they had to find a more permanent solution. MR. MARX said he had conferred with the state budget office about the Environmental Contingency Fund and the possibility of using that fund to help clean up Pony. The Governor said that would be an appropriate use of those funds because it was a case of threatened drinking water. The state budget office also said there were some remediation programs in place that could deal with problem.

SEN. BROOKE said she hoped the mining industry could be "nudged" because they said they would clean up the problem if they could be assured of immunity. But so far as SEN. BROOKE could discern, none of the mining industry people were dealing with it. She

wondered whose responsibility it was to make sure they did it. MR. NOBLE said there would be a Pony mine update at the next EQC meeting.

OTHER BUSINESS

MR. NOBLE asked if anyone was interested in going to the Consensus Council environmental seminars MR. MCKINNEY had discussed earlier. Six members responded. MR. NOBLE asked how the EQC felt about appropriating funds for those members to attend.

SEN. GROSFIELD asked MR. EVERTS how much the EQC budget could afford. MR. EVERTS said they could probably cover about \$250 to \$300 and he guessed the Legislative Services Division could cover a similar amount.

SEN. WELDON moved to allocate \$500 of EQC funds, and then divide it among those who wanted to attend. The motion was seconded. Motion passed unanimously.

MR. NOBLE said it was his intention to continue to allow time at each meeting to discuss current environmental events. He asked that EQC members tell him or MR. EVERTS what issues they were interested in. He said he thought it was time for an update on the Berkeley Pit and that a meeting in Butte should be scheduled. REP. KNOX said he feels, because of the enormity of the problem, the Council has a responsibility to monitor the situation.

SEN. RYAN said he feels the proposed mine in Lincoln is important because of the large environmental and economic impact.

REP. KNOX said another issue of importance existed in his

district, involving the shortfall of topsoil for reclamation of the Kendall mine.

MR. NOBLE asked if any of the EQC members had any objections to scheduling in advance all the interim's remaining EQC meetings.

REP. TASH said he felt EQC meetings should be scheduled in conjunction with subcommittee meetings.

REP. COCCHIARELLA said she thought it would not be a good idea to schedule all meetings, but that they should proceed with scheduling the next Enforcement and Compliance Subcommittee meeting for January 25.

MR. EVERTS reported that he called the Poplar Chamber of Commerce, a group that had contacted the EQC regarding an asbestos problem in a building in Poplar. The representative he spoke with told MR. EVERTS the DEQ would be assisting the Poplar Chamber of Commerce with the problem.

MR. NOBLE adjourned the meeting at 12:15.